

United States Bankruptcy Court Eastern District of Missouri

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EXCERPTS OF PROCEDURES MANUAL

(Incidental to Proposed
Local Rules of Bankruptcy Procedure)

January 31, 2003

United States Bankruptcy Court
111 South Tenth Street, Fourth Floor
St. Louis, MO 63102
www.moeb.uscourts.gov

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Introduction:

Pursuant to proposed Local Rule 1001-1 E, the Clerk of Court will publish operating procedures for the Court in a Procedures Manual. The Procedures Manual will contain local forms, guidelines and instruction related to the Local Rules and Court operations. This excerpt includes only provisions covering issues under Chapter 13 cases, Chapter 11 cases, and the proposed Fee Guidelines that were provided for public comment along with the Local Rules.

CHAPTER 13 PROCEDURES

1. Chapter 13 Attorney Fee Guidelines

- a. **Flat Fee Option - Allowed Flat Fee.** Attorneys for Chapter 13 debtors who elect the Flat Fee Option may receive \$1,700 (or \$1,885 if the filing fee is advanced) without application to the Court. See L.R. 2016-1 B.
- b. **Fee Application Option - Initial Fee.** Attorneys for Chapter 13 debtors who elect the Fee Application Option may receive, without filing a fee application, an initial fee of \$1,100 (or \$1,100 plus the filing fee, if the filing fee is advanced).
- c. **Limited Fee Application.** Attorneys for Chapter 13 debtors who elect the Fee Application Option may use the limited notice provisions of L.R. 2016-3A2b for applications seeking additional fees in a cumulative amount that is not more than \$400. All other applications must be served as specified in L.R. 2016-1B2.
- d. **Attorney Fees on Dismissal of Case Prior to Confirmation.** Unless otherwise directed, the Court will authorize payment of \$1,100 for debtor's attorney on dismissal of a case prior to confirmation.
- e. **Payment of Chapter 13 Attorney's Fees through Plan.** When paid through the plan, unless otherwise specified, the Chapter 13 trustee shall pay debtor's attorney's fees at the rate of 35% of funds available for distribution at the disbursement level for secured creditors.
- f. **Hourly Compensation for Debtor's Attorney.** Chapter 13 debtor's attorney may be compensated on an hourly basis for representation of the debtor in an appeal.

2. **Minimum Monthly Chapter 13 Plan Payment.** Unless otherwise ordered, the minimum monthly Chapter 13 plan payment in L.R. 3015-3 H is \$75.00.
3. **Confirmation of Plans.** Confirmation of a plan or amended plan may be approved prior to the confirmation hearing if no timely objection is filed. The trustee shall provide a proposed order confirming the plan or the pre- or post-confirmation amended plan.
4. **Plan Language for Use in Curing Missed Payments in Response to Trustee's Motion to Dismiss (See L.R.1017-2 B)**
If a debtor seeks to make up missed payments by extending the plan or raising the amount of future plan payments, or by both extending the life of the plan and the amount of each plan payment, the following format shall be employed to explain how the missed payments will be made:
 - a. Regular monthly plan payment plus \$_____ per month for _____ months (number of months) beginning _____(date).
 - b. Regular monthly plan payment plus \$_____ per month for the remainder of the plan term beginning _____ (date).
 - c. _____ dollars for ____ months, then ____ dollars for ____ months, then ____ dollars for ____ months with payments beginning _____. (date)
5. **Chapter 13 Requirements for Insurance on Motor Vehicles.** Local Rule 2015-2 C requires a debtor in a Chapter 13 case to maintain insurance on any motor vehicle on which a lien exists to secure a debt. Absent agreement between the debtor and the lienholder, the debtor shall:
 - a. prepay at least three (3) month's insurance on the vehicle;
 - b. provide for the collision and comprehensive deductible to be \$500; and the insurance policy shall name the lienholder as a loss payee. If the security agreement or other contract requires a deductible lower than \$500, such contract will govern the amount of deductible the debtor is required to maintain during the bankruptcy case.
6. **Chapter 13 Bankruptcy Vehicle Valuation.** The following policy shall govern valuation of automobiles in Chapter 13 cases pursuant to Associates Commercial Corporation v. Rash, 117 S.Ct. 1879 (1997).

Absent evidence to the contrary, a vehicle's value will be 95% of the National Automobile Dealers Association (NADA) (Central Edition) retail value at the time of filing for the first three years of the vehicle age. For each year thereafter, a 2% deduction

would be made from such valuation to a maximum deduction of 15%. For example, if a debtor files a Chapter 13 petition in 2003, and owns a 2002 Ford Explorer with an NADA retail value of \$20,000, it would be valued at 95% of this NADA value. If the same vehicle was a 2001 or 2000 model, it would still be valued at 95% of the NADA value for such vehicle make, model and year. Thereafter, the percentage of NADA valuation shall be reduced by 2% per year for each additional year, resulting in 93% of NADA value for a 1999 vehicle; 91% for a 1998 vehicle, to a maximum reduction to 85% of NADA value.

CHAPTER 11 PROCEDURES

1. **Initial Debtor Interview.** Promptly after the filing of a case under Chapter 11 or the conversion to that chapter, the pro se debtor or debtor's attorney shall contact the Office of the United States Trustee to arrange for an initial debtor interview. The debtor's attorney, or debtor if pro se, must also contact the United States Trustee to schedule the § 341 meeting of creditors.
2. **Notice of Claims Bar Date.** If debtor wants notice of the claims bar date to be included in the notice of commencement in a Chapter 11 case, the debtor must promptly obtain an order setting the bar date and must notify the Clerk's office of the bar date and the request to include the date in the Notice of Commencement.
3. **First Day Matters.** Typical first day matters include:
 - a. Motion for joint administration;
 - b. Application for employment of professionals, including attorneys, accountants, financial advisors.
 - c. Motion to extend time for filing schedules and statement of financial affairs to a specified date.
 - d. Motion for use of cash collateral
 - e. Motion for post-petition financing
 - f. Motion to pay pre-petition employee wage claims and benefits
 - g. Motion to enjoin termination of utilities and provide adequate assurance to utilities
 - h. Motion to vary from United States Trustee's requirements (such as maintenance of existing bank accounts, existing business forms, cash management systems, investment procedures, etc.)
 - i. Motion directing banks to honor pre-petition checks
 - j. Motions to allow debtor to pay certain pre-petition claims and honor certain pre-petition customer claims (refunds of deposits, warranties, etc.)
4. **Affiliated Debtor Cases.** When two or more petitions are pending in the same Court by a debtor and an affiliate, the Court may order the cases jointly administered. The debtor or another party in interest may request joint administration by motion served upon all

parties on the Master Service List (L.R. 9013-3 C) or if no such list exists, on those who would be on the list. The motion for joint administration shall be filed in the case requested to be designated as the lead case. Joint administration of a debtor and its affiliates shall be a procedural, and not a substantive consolidation of the cases.

- a. **Designation of Lead Case.** Unless otherwise stated in the order granting joint administration, when multiple affiliated cases are filed, the first case filed (i.e. the case having the lowest case number) shall be designated as the “lead case.”
 - b. **Docket.** A single case docket and case file shall be maintained in the lead case after entry of the order for joint administration.
 - c. **Style of Court Papers.** Pleadings and other documents filed after entry of the order for joint administration shall be styled with the caption of the lead case and shall indicate that the cases have been procedurally consolidated. The caption for a pleading or other document filed in jointly administered cases and intended as a pleading for all affiliated cases should follow the designated example in Local Form 22. The Court will docket and file such pleadings in the lead case. A pleading or document intended only to be filed in a particular affiliated case or cases must contain the name(s) of the particular debtor/case(s) in the caption as described in the example in Local Form 22. Such documents will be docketed to and deemed filed in only the designated case. Unless otherwise specified, all documents or pleadings will be physically located in the lead case file.
 - d. **Claims.** A separate claims register shall be maintained for each case. Claims must specifically state the name and case number of the debtor against which the claim is asserted. If claims are asserted against more than one of the joint debtors, a separate original claim must be filed in each case. Multiple debtor claims may not be filed through a single proof of claim. Although separate claims registered will be maintained in jointly administered cases, objections to claims shall be numbered sequentially and maintained by the Clerk of Court in a single claims objection file without regard to the particular estate against which the subject claim is asserted.
5. **Omnibus Objections in Chapter 11 Cases.** If claims or objections to claims are similar or related or are based upon similar facts or theories of law, more than one claim may be included within a single objection and served as required by L.R. 3007-1 C. In jointly administered Chapter 11 cases, each objection shall be assigned a claim objection number by the debtors and shall be numbered sequentially and maintained by the Clerk in a single claims objection file without regard to the particular estate against which the subject claim is asserted. The debtor shall be responsible for maintaining and distributing (monthly or more frequently as may be required) a Master Objections to Claims Calendar which shall set forth the hearing date and time, debtor company name, debtor case number, claimant’s name, claim number, claim amount, claim classification and claim objection number and shall indicate if any response has been received from claimant.

Debtor shall serve the Master Objections to Claims Calendar upon all parties on the Master Service List, or if none, upon all those who would be on such a list.

6. Insurance Requirements - Debtor-in-Possession.

- a. **General Requirements.** The Office of the United States Trustee requests the following from all debtors-in-possession:
 - 1. insure all estate assets against physical damage and loss with policy limits covering asset values stated in debtor's schedules;
 - 2. maintain liability coverage for operation and businesses; and
 - 3. as appropriate or customary for the industry, maintain additional types of insurance (workers compensation, products liability, or professional liability).
- b. **Proof of Insurance.** Upon request of an interested party, trustee or U.S. Trustee, debtor shall provide proof of insurance, which shall include a certificate of insurance, binder, or other document from the carrier stating amounts, types and period of coverage, and notification of any secured party as loss payee. Failure to provide proof presumes no insurance is in effect.

FEE GUIDELINES

Guidelines for Compensation of Professionals

Pursuant to Local Rule 2016-1, the following Guidelines for Compensation of Professionals apply in all bankruptcy cases in the Eastern District of Missouri except as noted for certain fees in Chapter 13 cases.

- A. Time Records in Support of Fee Applications.** Time records for which compensation is sought should be kept contemporaneously with the services provided and must identify the professional performing the task, the professional's hourly rate, and the length of time of the task expressed in tenths (1/10ths) of an hour. Services may not be "lumped" together unless distinct tasks performed in a project do not exceed .5 hours on a daily basis. All time entries must include a detailed description of the services performed organized in chronological order. All applications must contain activity descriptions with sufficient detail to allow the Court to determine if the requested time and service is actual, reasonable and necessary.
- B. Content of Application.** All applications for compensation must:
1. Contain information about the applicant, including:
 - a. the date the bankruptcy petition was filed,
 - b. date the order of employment was approved,
 - c. identification of party represented,
 - d. terms and conditions of employment and compensation, including sources and amount of any retainer, and
 - e. the time period covered by the application.
 2. Indicate:
 - a. whether application is interim or final;
 - b. the dates of previous orders on interim applications,
 - c. the amounts requested and allowed,
 - d. the amounts paid and any amounts remaining unpaid.
 3. Provide information on the status of the case including, in Chapter 11 cases:
 - a. whether all quarterly fees have been paid,
 - b. whether all monthly operating reports have been filed, and
 - c. the amount of cash on hand or deposit.

Items 1-3 may be provided in summary format following or supplementing Local Forms 4 and 5, "Summary of Fee Application."

4. Address the twelve factors from Johnson v. Georgia Highway Express, Inc., 488 F2d 718 (5th Cir. 1974) with a brief narrative of significant events in case during

period covered by application and a summary of major activity under each project category.

5. Include time records as an exhibit.

C. Time Limitations and Descriptions. Time entries should follow the following format:

- conferences and telephone calls should identify the participants and primary subject of the communication;
- drafting or reviewing documents should identify the document involved by title or subject matter;
- research should describe the research performed and its purpose;
- court hearings should describe the purpose of the hearing and if more than one professional attends a hearing or conference, the application must explain the need for multiple attendees;
- travel shall be limited to 50% of the professional's hourly rate; actual work performed during travel is excluded from this limitation.

D. Expenses. Supporting documentation is required to be retained for all expenses in excess of \$25.00. Copies of supporting documentation should not be filed or served with application except, when requested, copies should be served on the Office of the United States Trustee.

1. Allowed Expenses

- copying/duplication costs
- long-distance phone charges
- postage
- facsimile charges reflecting long distance telephone charges
- deposition and transcript fees
- filing fees
- witness fees
- service fees and other court costs
- travel expenses - including reasonable meal and lodging costs
- transportation (air - coach, taxi fares, parking, tolls, and non-local mileage at IRS rate)

2. Excluded Expenses The following are overhead expenses and are not compensable without consent of the Court: all continuous administrative or general costs of operating applicant's office, including word processing, secretarial time and overtime, paralegal overtime, office supplies, rent, utilities, equipment, furnishings, insurance, monthly cellular phone charges, library fees, taxes, messenger/express mail delivery charges, and computer research charges.